U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 067 50858 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established that she qualifies as an alien of extraordinary ability in her field of endeavor. This decision is based on the director's exclusion of a considerable portion of the evidence based on a determination that it did not relate to the petitioner's "field."

On appeal, counsel asserts that the director erred in narrowing the petitioner's field from biomedical research to cancer research. Counsel reiterates previous claims relating to the regulatory criteria discussed below.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in CIS regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, according to Part 6 of the petition, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. Prior counsel asserted that the petitioner was an alien with extraordinary ability in

the field of biomedical scientific research. The evidence submitted initially established that the petitioner focused on hypertension research in China and Japan before coming to the United States to work on breast cancer research. Most of the objective evidence relates to the petitioner's prior work on hypertension. In a request for additional evidence, the director requested objective evidence of the petitioner's extraordinary ability in cancer research. In response, prior counsel asserted that the petitioner's field is biomedical research.

In his final decision, the director noted the existence of professional cancer research organizations and concluded that cancer research was its own "field," albeit "encompassed by the area of biomedical research." Thus, counsel dismissed nearly all of the evidence of record relating to the petitioner's biomedical achievements with hypertension.

We agree with counsel that the director's decision to narrow the petitioner's field is not a useful manner in which to evaluate the evidence submitted. We do not allow a petitioner without demonstrable acclaim to narrow her field to the point where she ranks as one of the top members. Thus, it is error to perform the same type of disingenuous analysis that effectively excludes relevant evidence. Our analysis on this issue is supported by *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994). That court concluded that the alien's field should be characterized by the commonly offered degree. *Id.* at 1230. The AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision, however, will be given due consideration when it is properly before the AAO. *Id.* at 719. We find the court's reasoning relating to this issue persuasive in this case.[1]

The petitioner has a medical degree and a Ph.D. in medical science. The petitioner claims that her work on hypertension has garnered national or international acclaim. The director should have evaluated that claim. A separate question is whether the petitioner intends to continue in her area of expertise as required by 8 C.F.R. § 204.5(h)(5). In discussing the distinction between athletes and coaches, the court in *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field.

Unlike an athlete who seeks to enter the field of coaching, a medical researcher who seeks to continue as a medical researcher, albeit with a different focus, has a plausible argument that she is continuing in her profession. At the time of filing, the petitioner had presented her cancer research and had submitted two articles for publication, both subsequently published. While this evidence is not relevant to whether she enjoyed national or international acclaim as of the date of filing, it does suggest that, should she establish her extraordinary ability through her prior work, cancer research is (and was at the date of filing) within her area of expertise.

We are not persuaded by the director's concern that widening the field would make comparison among experts in the field impossible. The regulation at 8 C.F.R. § 204.5(h)(2) does define extraordinary ability as a level of expertise indicative of the very top of the field. According to the regulation at 8 C.F.R. § 204.5(h)(3), however,

[1] We do not reach the question of whether this reasoning is equally persuasive in the arts or athletics, where expertise is not always conferred by an academic degree.

the evidentiary standard for establishing eligibility is not a subjective comparison with others in the field, but objective evidence of national or international acclaim. We note that the regulations do not require or recommend evidence relating to others in the field, but focus on the alien's accomplishments and acclaim. That said, we acknowledge that comparisons may sometimes be worth noting. For example, where an alien seeks eligibility under 8 C.F.R. § 204.5(h)(3)(vi) with one or two published articles, Citizenship and Immigration Services (CIS) would be justified in noting that one of the references in the same field has published hundreds of articles. Nevertheless, the ultimate standard is whether the alien has sustained national or international acclaim.

The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The director concluded that the petitioner had not received any awards for cancer research. The director failed to consider the petitioner's 1999 second-grade prize from a national Chinese ministry. In response to the director's request for additional evidence, the petitioner submitted evidence that five first-grade and 10 second-grade prizes were awarded in 1999 to researchers at universities nationwide. The record also establishes that each institute and university nominated its best research project for the competition. We also note that the petitioner has received a young investigator award from the Chinese Pharmacological Society and the Institut de Recherches Internationales Servier. While this award does not place the petitioner at the top of her field because the most experienced members of the field, those over 37 years of age, are not eligible to compete, its national character and requirement that candidates must be principal investigators at the assistant professor or higher level at national research institutions make this achievement notable. In light of the above, we find that the petitioner sufficiently meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director concluded that the petitioner meets this criterion despite the fact the evidence does not relate to cancer research. We concur; the petitioner's editorial positions and unusually high number of peer reviews satisfactorily serves to meet this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As of the date of filing, the petitioner had authored 23 articles and had presented her work at several conferences. The record contains evidence that independent experts have consistently cited the petitioner's work. Evidence that the petitioner's work is widely cited can serve to establish the impact of this work. Thus, we find that the petitioner meets this criterion.

As we find that the petitioner has met the three regulatory criteria discussed above, we need not consider counsel's far less persuasive arguments regarding the remaining criteria the petitioner claims to meet.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that she has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in her field of expertise. For the reasons discussed above, the petitioner has established that she seeks to continue working in the same field in the United States. The petitioner has established that her entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.